

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CASCADIA WILDLANDS PROJECT, an Oregon)
nonprofit corporation, OREGON NATURAL)
RESOURCES COUNCIL FUND, an Oregon)
nonprofit corporation, LEAGUE OF WILDERNESS)
DEFENDERS - BLUE MOUNTAINS)
BIODIVERSITY PROJECT, an Oregon nonprofit)
corporation, and the SIERRA CLUB, a California)
nonprofit corporation,)

Plaintiffs,)

vs.)

UNITED STATES FOREST SERVICE, an agency)
of the United States Department of Agriculture,)
and LESLIE WELDON, in her official capacity)
as Dechutes National Forest Supervisor,)

Defendants.)

Civil Case No. 05-76-JE

OPINION AND ORDER

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KING, Judge:

The Honorable John Jelderks, United States Magistrate Judge, filed Findings and Recommendation on July 13, 2005. Plaintiffs filed timely objections to the Findings and Recommendation. When either party objects to any portion of a magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). The matter is before this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

This court has, therefore, given de novo review of the rulings of Magistrate Judge Jelderks. I decline to make a determination of whether to adopt the finding that any claim based upon the superseded 1982 regulations of alleged failure to comply with requirements to monitor MIS by obtaining quantitative population data is now moot because the 2005 regulations should be applied retroactively. I decline to make this determination because I agree with and adopt the finding that the Forest Service's determination that the Eyerly Project complied with the 1982 regulations was not arbitrary or capricious or contrary to law. Thus, I grant summary judgment against plaintiffs' first claim under NFMA.

I also acknowledge plaintiffs' objection that the Findings and Recommendation fails to address their argument that the administrative record does not support the finding that reliance on DecAID complies with the scientific integrity requirement of NEPA. I have considered this argument myself and conclude that NEPA is not violated in this respect.

Accordingly, this court ADOPTS the remaining portions of the Findings and Recommendation of Magistrate Judge Jelderks dated July 13, 2005 in its entirety.

IT IS HEREBY ORDERED that Plaintiffs' Motion to Strike the Declaration of Kim Mellen and alternative Motion for an Evidentiary Hearing (#33) is denied, Plaintiffs' Motion for Summary Judgment (#16) is denied, and Defendants' Motion for Summary Judgment (#20) is granted. The Temporary Restraining Order I entered on August 3, 2005 is lifted immediately. This action is dismissed with prejudice.

Dated this 12th day of August, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge